



May 4, 2001

Ms. Larissa T. Roeder
Assistant District Attorney
Dallas County District Attorney's Office
Frank Crowley Courts Building, LB 19
Dallas, Texas 75207-4399

OR2001-1828

Dear Ms. Roeder:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146785.

The Dallas County District Attorney's Office (the "district attorney") received a request for the following:

any and all information regarding the prior service and/or history of any juror who served on a jury in Dallas County since (the district attorney) began its practice of keeping such information. Additionally, I request the ranking, if any, of the former jurors as "good", "fair", or "bad", and any other comments regarding that former juror. Finally, I request that the name of the prosecutor or investigator, either current or former employees of the Dallas County District Attorney's Office, who provided the information, ranking, and comments regarding each individual juror.

The requestor further states that she is not seeking information contained in "Juror Information Cards" which are governed by article 35.29 of the Code of Criminal Procedure,

but rather the information placed into the internal records of the (district attorney's) Office which includes both personal information about the former juror and commentary of the prosecutor or investigator regarding their opinion about the prior jury service of that former juror and the name of the prosecutor or investigator making such entry.

You claim that the requested information is excepted from disclosure under sections 552.101, 552.108 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted sample of information.¹

Section 552.108, the “law enforcement exception,” provides in part:

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why section 552.108 is applicable. *See* Gov’t Code §§ 552.108, .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). With regard to the requested information, you state that

the requested information consists of subjective comments of individual prosecutors. Post trial, each prosecutor submits a handwritten juror information form detailing the specifics of the case and his assessment of each juror. The handwritten information is then input into a data file as evidenced in Exhibit 2. The subjective comments, sometimes detailed, sometimes not, reflect the mental impressions and/or legal reasoning of the attorney representing the State. As such the prosecutor’s juror evaluations are excepted from disclosure.

You further assert that the district attorney “uses the information to develop trial strategies and to evaluate and effectively prosecute crime. The requested information reveals the trial strategy of individual prosecutors and of this office. As such, the release of the requested information would compromise the effectiveness of individual prosecutors and this office in general when trying future cases.” We agree, and conclude that the submitted information contained in Exhibit 2 may be withheld from the requestor under section 552.108(b)(1) of the Government Code. *See* Open Records Decision No. 369 (1983) (disclosure of

¹We assume that the “representative samples” of records submitted to this office are truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). More specifically, we assume that the submitted information contained in Exhibit 2 is representative of the information contained in the hand-written notes of prosecutors, to the extent such hand-written notes exist. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

prosecutors' subjective comments about former jurors would tend to indicate the state's possible strategy in future prosecutions, and, in doing so, would compromise state's effectiveness in prosecuting criminal matters). As we resolve your request under section 552.108, we need not address your other raised exceptions.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/er

Ref: ID# 146785

Encl: Submitted documents

cc: Ms. Jennifer Balido
Assistant Public Defender
Dallas County
133 North Industrial Boulevard, LB2, 9th Floor, Suite C-1
Dallas, Texas 75207-4313
(w/o enclosures)